



# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 415 be amended to read as follows:

- 1       Page 50, delete lines 36 through 42, begin a new paragraph and
- 2       insert:
- 3       "SECTION 31. IC 32-30-10.5-8, AS AMENDED BY P.L. 102-2012,
- 4       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5       JULY 1, 2015]: Sec. 8. (a) This section applies to a foreclosure action
- 6       that is filed after June 30, 2009. Except as provided in subsection (e)
- 7       and ~~section~~ **sections 10(g) and 12** of this chapter, not later than thirty
- 8       (30) days before a creditor files an action for foreclosure, the creditor
- 9       shall send to the debtor by certified mail a presuit notice on a form
- 10      prescribed by the authority. The notice required by this subsection must
- 11      do the following:
- 12      (1) Inform the debtor that:
- 13          (A) the debtor is in default;
- 14          (B) the debtor is encouraged to obtain assistance from a
- 15          mortgage foreclosure counselor; and
- 16          (C) if the creditor proceeds to file a foreclosure action and
- 17          obtains a foreclosure judgment, the debtor has a right to do the
- 18          following before a sheriff's sale is conducted:
- 19              (i) Appeal a finding of abandonment by a court under
- 20              IC 32-30-10.6.
- 21              (ii) Redeem the real estate from the judgment under
- 22              IC 32-29-7-7.
- 23              (iii) Retain possession of the property under
- 24              IC 32-29-7-11(b), subject to the conditions set forth in
- 25              IC 32-29-7-11(b).
- 26      (2) Provide the contact information for the Indiana Foreclosure
- 27      Prevention Network.

(3) Include the following statement printed in at least 14 point boldface type:

**"NOTICE REQUIRED BY STATE LAW**

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana Foreclosure Prevention Network."

(b) The notice required by subsection (a) shall be sent to:

- (1) the address of the mortgaged property; or
- (2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

If the creditor provides evidence that the notice required by subsection (a) was sent ~~by certified mail, return receipt requested,~~ and in accordance with this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.

(c) Except as provided in subsection (e) and section 10(g) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall:

- (1) in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, include with the complaint served on the debtor, on a form prescribed by the authority; and
- (2) subject to subsection (f), in the case of a foreclosure action filed after June 30, 2011, include on the first page of the summons that is served on the debtor in conjunction with the complaint;

a notice that informs the debtor of the debtor's right to participate in a settlement conference, subject to section 9(b) of this chapter. The notice under subdivision (1) or (2) must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the complaint is served on the debtor, of the debtor's intent to participate in a settlement conference.

(d) If a creditor files an action to foreclose a mortgage the creditor shall do the following:

- (1) Include with the complaint filed with the court:
  - (A) except as provided in subsection (e) and ~~section~~ **sections 10(g) and 12** of this chapter, a copy of the notices sent to the debtor under subsections (a) and (c), if the foreclosure action is filed after June 30, 2009, but before July 1, 2011; or
  - (B) the following, if the foreclosure action is filed after June 30, 2011:
    - (i) Except as provided in subsection (e) and section 10(g) of this chapter, a copy of the notice sent to the debtor under

1 subsection (a).  
 2 (ii) The following most recent contact information for the  
 3 debtor that the creditor has on file: all telephone numbers  
 4 and electronic mail addresses for the debtor and any mailing  
 5 address described in subsection (b)(2). The contact  
 6 information provided under this item is confidential under  
 7 IC 5-14-3-4(a)(13).

8 (2) For a foreclosure action filed after June 30, 2011, at the time  
 9 the complaint is filed with the court, send:

- 10 (A) by certified mail, return receipt requested; and  
 11 (B) to the last known mailing address of the insurance  
 12 company;  
 13 a copy of the complaint filed with the court to the insurance  
 14 company of record for the property that is the subject of the  
 15 foreclosure action.

16 It is not necessary that the insurance company accept receipt of the  
 17 copy of the complaint for the creditor to satisfy the requirement of  
 18 subdivision (2). A creditor's failure to provide a copy of the complaint  
 19 as required by subdivision (2) does not affect the foreclosure action or  
 20 subject the creditor to any liability. Subject to section 9(b) of this  
 21 chapter, in the case of a foreclosure action filed after June 30, 2011,  
 22 upon the filing of the complaint by the creditor, the court shall send to  
 23 the debtor, by United States mail and to the address of the mortgaged  
 24 property, or to an address for the debtor provided by the creditor under  
 25 subdivision (1)(B)(ii), if applicable, a notice that informs the debtor of  
 26 the debtor's right to participate in a settlement conference. The court's  
 27 notice must inform the debtor that the debtor may schedule a settlement  
 28 conference by notifying the court of the debtor's intent to participate in  
 29 a settlement conference. The court's notice must specify a date by  
 30 which the debtor must request a settlement conference, which date  
 31 must be the date that is thirty (30) days after the date of the creditor's  
 32 service of the complaint on the debtor under subsection (c), as  
 33 determined by the court from the service list included with the  
 34 complaint filed with the court. The court may not delegate the duty to  
 35 send the notice the court is required to provide under this subsection to  
 36 the creditor or to any other person.

37 (e) A creditor is not required to send the notices described in this  
 38 section if:

- 39 (1) the mortgage is secured by a dwelling that is not occupied by  
 40 the debtor as the debtor's primary residence;  
 41 (2) the mortgage has been the subject of a prior foreclosure  
 42 prevention agreement under this chapter and the debtor has  
 43 defaulted with respect to the terms of that foreclosure prevention  
 44 agreement; or  
 45 (3) bankruptcy law prohibits the creditor from participating in a  
 46 settlement conference under this chapter with respect to the

1 mortgage.

2 (f) Not later than June 1, 2011, the authority, in consultation with  
 3 the division of state court administration, shall prescribe language for  
 4 the notice required under subsection (c)(2) to be included on the first  
 5 page of the summons that is served on the debtor in a foreclosure action  
 6 filed after June 30, 2011. The language must convey the same  
 7 information as the form prescribed by the authority under subsection  
 8 (c)(1) for foreclosure actions filed after June 30, 2009, but before July  
 9 1, 2011. The authority shall make the language prescribed under this  
 10 subsection available on the authority's Internet web site. A creditor  
 11 complies with subsection (c)(2) in a foreclosure action filed after June  
 12 30, 2011, if the creditor includes on the first page of the summons  
 13 served on the debtor:

- 14 (1) the language that is prescribed by the authority under this
- 15 subsection and made available on the authority's Internet web site;
- 16 or
- 17 (2) language that conveys the same information as the language
- 18 that is prescribed by the authority under this subsection and made
- 19 available on the authority's Internet web site.

20 SECTION 32. IC 32-30-10.5-8.5, AS ADDED BY P.L.170-2011,  
 21 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2015]: Sec. 8.5. (a) **Except as provided in section 12 of this**  
 23 **chapter**, this section applies to the following:

- 24 (1) A mortgage foreclosure action with respect to which:
  - 25 (A) the creditor has filed the complaint in the proceeding
  - 26 before July 1, 2011;
  - 27 (B) the debtor has contacted the court under section 8(c) of
  - 28 this chapter or under section 11(b) of this chapter to schedule
  - 29 a settlement conference under this chapter; and
  - 30 (C) the court having jurisdiction over the action has not:
    - 31 (i) issued a stay in the foreclosure proceedings pending the
    - 32 conclusion of the settlement conference under this chapter;
    - 33 (ii) issued a default judgment against the debtor in the
    - 34 action; or
    - 35 (iii) rendered a judgment of foreclosure in the action.
- 36 (2) A mortgage foreclosure action with respect to which:
  - 37 (A) the creditor has filed the complaint in the proceeding after
  - 38 June 30, 2011; and
  - 39 (B) the debtor has contacted the court under section 8(c) of
  - 40 this chapter to schedule a settlement conference under this
  - 41 chapter.

42 (b) In a mortgage foreclosure action to which this section applies,  
 43 the court, notwithstanding Indiana Trial Rule 56, shall stay the granting  
 44 of any dispositive motion until one (1) of the following occurs, subject  
 45 to the court's right under section 10(b) of this chapter to order the  
 46 creditor and the debtor to reconvene a settlement conference at any

time before judgment is entered:

(1) The court receives notice under section 10(e) of this chapter that after the conclusion of a settlement conference held under this chapter:

(A) the debtor and the creditor have agreed to enter into a foreclosure prevention agreement; and

(B) the creditor has elected under section 10(e) of this chapter to dismiss the foreclosure action for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(2) The court receives notice under section 10(f) of this chapter that after the conclusion of a settlement conference held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

(c) If the debtor requests a settlement conference under this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B).

SECTION 33. IC 32-30-10.5-9, AS AMENDED BY P.L.102-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) Except as provided in sections 8(e), ~~and~~ 10(g), **and 12** of this chapter and subsection (b), and subject to section 8.5 of this chapter, after June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 8(c) of this chapter.

(2) One (1) of the following applies:

(A) The debtor does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter.

(B) The debtor contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter and, upon conclusion of the settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(C) In a foreclosure action filed after June 30, 2011, the debtor:

(i) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter; and

(ii) does not provide to the creditor and the court at least one (1) of the documents required as part of the debtor's loss mitigation package, as specified by the authority in the listing developed under section 10(i) of this chapter and included with the court's notice under section 10(a)(8) of this chapter, within the time specified in the court's notice

- 1 under section 10(a)(3)(A) of this chapter.
  - 2 (3) At least sixty (60) days have elapsed since the date the notice
  - 3 required by section 8(a) of this chapter was sent.
  - 4 (b) If the court finds that a settlement conference would be of
  - 5 limited value based on the result of a prior loss mitigation effort
  - 6 between the creditor and the debtor:
  - 7 (1) a settlement conference is not required under this chapter; and
  - 8 (2) the conditions set forth in subsection (a) do not apply, and the
  - 9 foreclosure action may proceed as otherwise allowed by law.
  - 10 SECTION 34. IC 32-30-10.5-12 IS ADDED TO THE INDIANA
  - 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
  - 12 [EFFECTIVE JULY 1, 2015]: **Sec. 12. This chapter does not apply**
  - 13 **to a mortgage that is serviced by a mortgage servicer that is**
  - 14 **subject to the requirements of 12 CFR 1024.39, 12 CFR 1024.40,**
  - 15 **and 12 CFR 1024.41."**
  - 16 Delete pages 51 through 62.
  - 17 Page 63, delete lines 1 through 25.
  - 18 Page 63, line 28, delete "JANUARY 1, 2015 (RETROACTIVE)]."
  - 19 and insert "JANUARY 1, 2015 (RETROACTIVE)]:".
  - 20 Renumber all SECTIONS consecutively.
- (Reference is to SB 415 as printed January 30, 2015.)

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Senator TALLIAN